

DOCKET FILE COPY  
ORIGINAL

FCC MAIL SECTION

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93-333

DISPATCHED BY

In the Matter of

Implementation of Section 25 of

FD Docket No. 93-21 ✓

## I. INTRODUCTION

1. This Interim Report is issued pursuant to Section 26 of the Cable Act of 1992, which directs the Commission to "conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services" and to issue reports to Congress on or before July 1, 1993, and July 1, 1994.<sup>1</sup> On February 9, 1993, the Commission released its Notice of Inquiry in this

Interim Report. While the record in this proceeding has provided us with a workable preliminary review of how video sports programming is distributed, the information we have received raises further questions. We therefore will point out areas of potential concern that we intend to explore in greater detail in our forthcoming Further Notice of Inquiry and ultimately in our Final Report, to be issued on or before July 1, 1994.

4. The structure of this Interim Report is similar to the organization of the Notice. First, we will discuss commenters' suggestions regarding the scope of our inquiry and our proposed method for measuring migration. Next, we will detail our findings as to how sports programming is currently distributed, with individual emphasis on four professional and two college sports. We will then examine the existence and prevalence of preclusive

## B. Characterization of Superstations

6. The Notice also inquired as to the proper classification of superstations for purposes of this study.<sup>6</sup> As pointed out in the Notice, a superstation is an independent broadcast station that is retransmitted by satellite.<sup>7</sup> Therefore, while a superstation might be considered a local broadcast station within its broadcast coverage area, it might be considered a cable service outside of its broadcast area. MLB, NBA and NHL contend that superstations should be considered local broadcast stations within their local market areas and national cable networks outside of those areas.<sup>8</sup> Tribune, Turner and United Video argue that superstations should be viewed as local media. Tribune asserts that superstation broadcasts are directed at

### C. Measurement of Migration

8. In the Notice, we defined sports migration as the movement of sports programming from broadcast television to a subscription medium.<sup>13</sup> We noted that it is easy to measure migration of major post-season events such as the World Series, the Stanley Cup Finals, the Super Bowl, the NBA Championships, college football bowl games, or the NCAA Final Four, because the character of such events has remained relatively constant over the years. With respect to regular season games, however, the Notice pointed out that schedule changes from year to year and variations in the strength of teams make migration of regular season games more difficult to measure. To account for the differences between regular season and post-season games, the Notice proposed to measure migration by comparing regular season games exhibited on broadcast and non-broadcast media each year and by making a separate comparison for post-season games. While we indicated in the Notice that we believed the number of games in each category to be the proper comparison, we sought comment on whether we should instead measure migration with reference to audience ratings or other criteria.<sup>14</sup>

9. Commenters offer several suggestions regarding the appropriate way to measure sports migration. NCAA supports a comparison of numbers of games rather than ratings, particularly in light of the significant extent to which sports programming is viewed outside the home.<sup>15</sup> NHL also discourages use of audience ratings, contending that annual average audience ratings are often unavailable at the local level and that audience fragmentation has generally driven ratings down.<sup>16</sup> NBA, on the other hand, suggests that we consider the number of viewers to whom programming is made available or the number of viewers who actually watched the programming.<sup>17</sup> Rather than a strict numerical comparison, Daniel Scott Dunham suggests that the Commission compare the percentage of games on broadcast TV with the percentage of games on subscription media.<sup>18</sup> NFL submits that the Commission should look to whether programming that was otherwise available on broadcast television has moved to a non-broadcast medium, and whether consumers have access to fewer games on broadcast television as a result. NFL would also include information regarding the willingness of broadcasters to purchase the rights to sports programming, arguing that "[i]f television rights are sold to basic cable networks because they cannot be sold at a reasonable price to

---

<sup>13</sup> Notice at 1492.

<sup>14</sup> Id. at 1494.

<sup>15</sup> NCAA Comments at 4.

<sup>16</sup> NHL Comments at 7-8.

<sup>17</sup> NBA Comments at 5.

<sup>18</sup> Daniel Scott Dunham Comments at 1-4.

broadcasters, that cannot properly be considered 'migration.'<sup>19</sup> NBC urges us to focus on post-season games and asserts that post-season games are more consistent than regular season games in quantity and in viewer demand from year to year.<sup>20</sup>

10. In addition, Time Warner submits that because the level of viewer interest for a given telecast varies substantially among local, regional and national audiences, the Commission should treat local, regional and national sports programming separately. It also contends that the Commission should distinguish between post-season and championship games, and that the Commission should break down games by audience type (i.e., home, away, neutral). Time Warner further urges the Commission to consider qualitative differences in coverage, such as frequency of commercial interruption, pre-game and post-game shows, or production quality.<sup>21</sup> Time Warner also asserts that the programming strategies of the major professional sports are a product of a number of factors, including their internal organization, the

other relevant factors suggested by commenters as appropriate.<sup>25</sup>

### III. SUMMARY OF FINDINGS REGARDING THE CURRENT DISTRIBUTION OF SPORTS PROGRAMMING

#### A. Migration of Sports Programming in General

12. In the Notice, we requested that commenters provide examples of migration that had already occurred. We also requested specific data from 1980 through the present regarding the four professional and two college sports that are the focus of our study.<sup>26</sup> In addition, the Notice sought comment regarding the causes and consequences of sports migration, both economic and social.<sup>27</sup> The Notice also requested information on the impact of superstation telecasts of sports events.<sup>28</sup> In addition, the Notice sought information regarding the availability of superstations, ESPN and other national cable networks offering significant sports programming, such as TNT and BET, and inquired as to the growth of regional sports networks, both broadcast and cable, and pay-per-view services.<sup>29</sup> Data regarding these latter issues are included in Appendix C, Chart 1.

13. General comments. Most commenters contend that there has been no significant migration of sports programming from broadcast television to subscription media. They argue that cable carriage of sports has not decreased the number of sports events shown on broadcast television, but rather has supplemented broadcast television so as to increase the quantity and diversity of sports events available to the viewing public.<sup>30</sup> For example, NBC and NCTA cite last year's Olympics Triplecast as an example of how cable television can enhance coverage of an event without compromising

---

<sup>25</sup> We note that Tribune believes that the Notice went beyond the statute by inquiring into contractual and territorial arrangements, gate receipts, licensing, superstation growth and other issues. Tribune Comments at 2. We believe that the information requested is necessary to fulfill our Congressional mandate to "investigate and analyze" trends in the migration of sports programming, "including the economic causes and the economic and social consequences of such trends." 1992 Cable Act, Section 26(a).

<sup>26</sup> Notice at 1494-95.

<sup>27</sup> Id. at 1496.

<sup>28</sup> Notice at 1493.

<sup>29</sup> Id.

<sup>30</sup> See, e.g., ARC Comments at 4; CapCities/ABC Comments at 3; ESPN Comments at 5-6; MLB Comments at 3; NBA Comments at 1-3; NBC Comments at 1-3; NHL Comments at 19-20; NCTA Comments at 2-5; Time Warner Reply at 2-5.

the coverage provided by broadcast television.<sup>31</sup> A number of commenters submit that cable carriage has been particularly beneficial to collegiate athletics and other amateur sports by telecasting events that would not otherwise be shown.<sup>32</sup> Moreover, these commenters contend, broadcast stations remain a primary outlet, if not the preferred medium, for distribution of



Warner asserts that broadcasters may make a determination that it is uneconomical to televise certain sports because of audience size, demographics, rights fees, production costs, or other factors.<sup>39</sup> INTV submits, however, that if broadcasters have not bid as high for certain events as cable operators, it is because cable channels have distinct advantages in negotiation, including a dual revenue stream, the support of a parent MSO and regional or national reach.<sup>40</sup> CBS similarly asserts that cable has the advantage of a dual revenue stream, that cable offers abundant alternatives to broadcast coverage thus diminishing the size of broadcast sports audiences, and that cable offers more advertising availabilities in sports programming.<sup>41</sup> Pappas also disagrees that broadcasters are not interested in sports programming, and argues that cable simply outbids broadcast television for sports events.<sup>42</sup>

16. NCTA, on the other hand, submits that although cable has two revenue streams, local broadcast stations have free, government granted spectrum that gives them 100 percent market penetration.<sup>43</sup> Similarly, Rainbow asserts that while owners are hesitant to broadcast home games over the air due to concerns about lost gate receipts, owners generally prefer to sell the rights to away games to broadcast stations because broadcast signals are available to the entire viewing audience. Rainbow also contends that franchise fees and other costs imposed on cable operators constrain their ability to pay programmers, and argues that broadcast advertising revenues frequently exceed the combined revenue streams available to cable.<sup>44</sup> Some commenters also contend that the emergence of the Fox Network among independent stations has resulted in realignment of sports programming in several markets because these stations are reluctant to preempt prime time programming for sports events.<sup>45</sup> Pappas disagrees, arguing that if a Fox affiliate chose to carry less sports programming, then other independents in the same market would pick up the events the Fox station dropped.<sup>46</sup> In addition, Time Warner contends that the programming strategies of rights holders are influenced by internal factors such as organizational, labor and scheduling issues, as well as external factors such as viewer interest,

---

<sup>39</sup> Time Warner Comments at 10-11.

<sup>40</sup> INTV Reply at 2-5.

<sup>41</sup> CBS Reply at 8-10.

<sup>42</sup> Pappas Reply at 7-8.

<sup>43</sup> NCTA Reply at 5.

<sup>44</sup> Rainbow Comments at 5-7; 18-20.

<sup>45</sup> See, e.g., ARC Reply at 20 n.6; MLB Comments at 8; Rainbow Comments at 17-18; Turner Comments at 14.

<sup>46</sup> Pappas Reply at 7.

demographics and broadcasters' limited number of programming slots.<sup>47</sup>

17. Consequences. Parties who believe that significant sports migration has occurred contend that the consequences have been extremely detrimental to broadcast television stations. They argue that local stations, many of which are already in precarious financial condition, will not be able to outbid cable for sports events and will not be able to afford to provide other quality programming due to loss of sports revenues.<sup>48</sup> Commenters also assert that sports migration has had adverse consequences for sports fans. For example, CBS contends that basic cable service costs \$25 or more and notes that in 1992, five baseball teams offered pay-per-view games on cable for as much as \$7.95 per game, and four basketball teams and three hockey teams offered pay-per-view games for as much as \$13.95 for regular season games and \$19.95 for playoffs.<sup>49</sup> The New York City Department of Telecommunications and Energy notes that access to sports programming carried on MSG Network and SportsChannel will cost as much as \$37.95 per month (\$455 per year).<sup>50</sup>

18. Impact of superstations. NBA, NHL and MLB contend that telecasts of games over broadcast stations delivered by satellite, or superstations, can negatively affect concurrent broadcasts of other games by fragmenting the viewing audience and interfering with exclusivity.<sup>51</sup> MLB notes that in 1980, three superstations collectively presented 315 games while in 1993, seven superstations will present a total of 695 games. MLB submits that the most prominent of the current superstations, WTBS, WGN and WJW, reach 58 million, 38 million and 13 million households, respectively.<sup>52</sup> MLB also argues that the unfair competition to CBS and ESPN posed by superstation sales of national advertising has been a major factor depressing interest on the part of national broadcast and cable networks in televising regular season baseball.<sup>53</sup>

19. Conversely, Turner contends that its superstation telecasts on WTBS do not divert audience from local game broadcasts. Turner asserts that 1991

---

<sup>47</sup> Time Warner Comments at 14-28.

<sup>48</sup> INTV Reply at 8; NAB Comments at 3-5.

<sup>49</sup> CBS Reply at 6-7.

<sup>50</sup> NYC Comments at 6. We presume that NYC is referring to the cost of subscribing to basic cable plus SportsChannel plus MSG Network (where it is not included on the basic tier).

<sup>51</sup> NBA Comments, Exhibit 7 (report by Bortz & Company regarding the impact of superstation carriage of NBA games); NHL Comments at 18-19; MLB Comments at 9-15.

<sup>52</sup> MLB Comments at 12-15.

<sup>53</sup> Id. at 9-11.

ratings for home market MLB broadcasts averaged 11.3 when up against a telecast of the same game on WTBS and 11.2 when not duplicated by TBS; games duplicated by WTBS averaged a 0.5 rating in those same local markets.<sup>54</sup> Turner argues that while superstations do compete for advertising dollars with national network baseball, that competition is not substantial. Turner further asserts that superstations do not compete with broadcasters for local advertising dollars, since the compulsory copyright license requires a superstation signal to be carried without modification by the cable operator.<sup>55</sup>

20. In addition, United Video contends that superstation growth has slowed in recent years. It argues that while television coverage of professional sports has increased over the past 10 years, the superstation portion of that coverage has declined. For example, from 22 percent of 1977

to the 1990 season, 10 teams qualified for the playoffs — the 6 divisional champions as well as the 2 other teams in each conference with the best records (i.e., wild card teams). Beginning in 1990, a third wild card team was added from each conference, expanding the total number of playoff qualifiers to 12 teams. Those teams play in a four-week single elimination tournament, culminating with the two conference champions meeting in the Super Bowl.<sup>58</sup>

23. NFL has contracts with the three broadcast networks and with ESPN and TNT. Each of these contracts was entered into prior to the 1990 season and will expire following the 1993 season. Pursuant to its contract with NFL, NBC receives 3 pre-season games, all non-prime time regular season AFC games, all non-prime time inter-conference games where the visitor is an AFC team, all AFC playoff games (other than the AFC Wild Card game televised by ABC) and one Super Bowl. CBS receives the corresponding package for the NFC. NBC and CBS games are generally broadcast on Sunday afternoons, Thanksgiving Day and Saturday afternoons late in the season. ABC, whose telecasts are shown on Monday nights, receives 4 pre-season games, 17 regular season games (18 in 1993), two playoff games and one Super Bowl.<sup>59</sup>

24. With respect to its cable contracts, NFL notes that from 1980 through 1986, NFL games were shown exclusively on broadcast television. In 1987, the NFL sold eight Sunday night games to ESPN after ABC decided to drop the Thursday and Sunday night games it had previously shown as specials in addition to its Monday night games. In 1990, the NFL further increased the number of games available by restructuring regular season and post-season play and added TNT as a second cable carrier. TNT and ESPN currently share a package of 17 Sunday night games (18 in 1992 and 1993), with TNT carrying the games during the first half of the season and ESPN during the second half. Each cable network also receives the rights to three preseason games. The Pro Bowl, telecast by ESPN, is the only post-season game included in the cable contracts.<sup>60</sup>

25. The rights sold to CBS and NBC are non-exclusive (i.e., the two networks air competing telecasts on Sunday afternoon), while the ABC and cable network rights are exclusive. All games, however, including those telecast by ESPN and TNT, are broadcast over the air in the home market of the visiting team and, if the game is sold out 72 hours in advance, in the home market of the home team.<sup>61</sup> NFL submits that because of the relatively limited number of home games that each NFL team plays, it is important to maximize attendance revenues, and asserts that the guarantee that all of the teams' road games will be brought back to the home market helps to promote

---

<sup>58</sup> See NFL Comments at 8-9.

<sup>59</sup> Id. at 10, 16.

<sup>60</sup> Id. at 10-13, 16, 20-21. ESPN notes that NFL games are the highest rated programs carried on ESPN. ESPN Comments at 7.

<sup>61</sup> Id. at 9-10, 13-14, 16.

the club locally and thereby bolster home attendance.<sup>62</sup>

26. With respect to the centralized control of television rights that is unique to professional football, NFL asserts that its ability to sell the rights for all of its teams is of significant benefit in controlling and limiting any potential future migration of programming. It also contends that centralized control ensures a competitive balance, in that more popular teams cannot obtain a more lucrative contract than other teams or dominate the broadcast stations so as to force less popular teams off of broadcast television and onto cable or pay-per-view.<sup>63</sup> Further, NFL submits that shared television revenue is the largest single source of revenue for NFL teams; in 1993, each NFL team will receive over \$39 million from the network contracts, a sum that is projected to represent over 60 percent of the

Western Conference (Midwest and Pacific Divisions).<sup>67</sup> There are four rounds of post-season play. Since the 1983-84 season, the first round has featured 16 teams -- the four Division winners and the six teams in each Conference with the next best records -- in eight best-of-five series. The Conference semifinals feature the eight first round winners in four best-of-seven series. The Conference finals feature the four semifinal winners in two best-of-seven series, and the NBA finals feature the two conference champions in a best-of-seven series.<sup>68</sup>

30. NBA has national contracts with NBC and TNT that began with the 1990-91 season and expire at the end of the 1993-94 season. Revenues from the NBC and TNT contracts are shared equally by all teams.<sup>69</sup> Pursuant to its contract with NBA, NBC is authorized to broadcast up to 61 games each season. These 61 games include between 17 and 26 regular season games (including the All-Star Game), between 19 and 28 playoff games, and all of the games of the NBA Finals. No telecasts may be licensed to any other national broadcast network and no team may televise any game by any means during the broadcast of a game by NBC. TNT is authorized to telecast at least 50 preseason and regular season games, certain special events related to the All-Star Game, and up to 30 games during the first three rounds of the playoffs. All games televised by TNT are also available for over-the-air broadcast or cablecast in the local markets of the competing teams, and all TNT cablecasts are blacked out on cable systems within a 35-mile radius of the city of operation of the home team. No NBA telecasts may be licensed to any other national cable network and no superstation game may be telecast nationally on the same night that TNT telecasts an NBA game.<sup>70</sup>

---

<sup>67</sup> NBA Comments at 7. From 1980-81 through 1987-88, there were 23 NBA teams. There were 25 teams in 1988-89, and there have been 27 teams since 1989-90. *Id.* at 8.

<sup>68</sup> *Id.* at 9-10. Prior to the 1983-84 season, the first round of playoffs featured the four teams from each Conference with the best records, excluding the Division champions, in four best-of-three series. The second round featured eight teams -- the four first-round winners and the four regular season Division champions in four best-of-seven series. The third round featured the four semifinal winners in two best-of-seven series, and the fourth round, the NBA finals, featured the two Conference champions in a best-of-seven series. *Id.* at 7-9.

<sup>69</sup> NBA notes that it has been reported publicly that NBC agreed to pay \$601 million to the NBA for the rights it purchased and that TNT agreed to pay \$275 million. NBA Comments at 12. NBA also notes that on average for the 1991-92 regular season, total broadcasting income (including national broadcast and cable, local and regional broadcast and cable, local radio and other broadcast income) accounted for 43.2 percent of revenues. Gate receipts accounted for 41.9 percent of revenues, and other sources of income accounted for the remaining 14.9 percent of revenues. *Id.* at 17-18.

<sup>70</sup> *Id.* at 12-13.

31. With respect to local telecasts, each NBA team is permitted to broadcast or authorize broadcast of its games within the team's home state or within 150 miles of the team's city of operation, provided that no station carrying the team's games is located within another team's territory. Each team is also permitted to authorize the telecast of its games via cable or satellite within 75 miles of the team's city of operation. Beyond 75 miles, regional cable or satellite distribution is permitted as long as the telecaster enters into an agreement with the NBA. NBA expects that during the 1992-93 regular season, teams will broadcast from 1 to 41 games on local over-the-air television and from zero to 74 games on local or regional cable. NBA submits that there were 736 local/regional broadcasts and 922 local/regional cablecasts during the 1992-93 regular season. See Appendix C, Chart 6. In addition, some local NBA flagship stations are also superstations and thus will distribute games locally over the air and nationally via cable. NBA submits that in 1992-93, WTBS will carry 30 Atlanta Hawks games, WGN will carry 30 Chicago Bulls games and WWOR will carry 10 New Jersey Nets games. These games may be blacked out in the home team's local area if the team is not broadcasting the game locally over the air.<sup>71</sup>

32. INTV expresses concern regarding migration of local NBA games from broadcast to cable television. INTV asserts that while the number of NBA games appearing on local television stations has increased in the aggregate, this is largely due to expansion of the league. INTV submits that games appearing on pay cable channels has increased from 540 games in 1985-86 to 750 games in 1989-90. Specifically, INTV notes that a Philadelphia station broadcast 42 76er games in 1988, 1989 and 1990, but has broadcast only 10 games since the 1991-92 season, as the remaining games have gone to PRISM, a pay cable channel.<sup>72</sup> INTV notes that beginning with the 1994-95 season, all 76er games will be on PRISM or SportsChannel, another cable sports network. INTV contends that the broadcast station was willing to pay rights fees but that PRISM outbid the station.<sup>73</sup> Further, INTV asserts that broadcasts of Knicks games have dropped from 27 in 1989-90 to two in 1991-92, and that

---

<sup>71</sup> Id. at 13-15.

<sup>72</sup> NBA notes that no 76ers games are distributed on a pay-per-view basis as indicated in the Notice. Rather, the 76ers games are carried in Philadelphia by WPHL and by PRISM/SportsChannel. NBA submits that during the current season, seven 76ers games are scheduled for WPHL, 13 for SportsChannel Philadelphia (basic cable), and 61 for PRISM (pay cable). NBA Comments at 16.

<sup>73</sup> NBA specifically disputes INTV's claim that all 76er games will be on PRISM as of 1994. It argues that there is no reason to believe that 76er games will not continue to be shown by the current broadcaster or another broadcast station. See NBA May 6, 1993, Supplemental Comments at 1.

broadcasts have also decreased in Boston.<sup>74</sup> Similarly, the New York City



34. It does not appear from the data submitted that professional basketball has migrated from broadcast to cable television to a significant extent, either at the national or local level. Charts 4 and 5 of Appendix C detail national NBA telecasts since 1980, and Chart 6 includes data regarding local NBA telecasts since 1981. Chart 4 estimates that an all-time high of regular season games will be broadcast nationally in 1992-93 (25 games), and Chart 5 shows that post-season national broadcasts increased from a low of 19 in 1982-83 to a high of 28 in 1991-92. Local broadcasts of regular season games have also increased. Chart 6 shows a low of 465 regular season games broadcast in 1982-83 and a high of 736 games broadcast in 1992-93. Local post-season broadcasts have been less steady. Chart 6 shows a high of 60

37. This season, 16 regular season Saturday afternoon games, the All-Star Game, and all post-season games will be broadcast nationally on CBS. MLB notes that in 1980, NBC and ABC combined to present 42 national broadcasts of regular season games.<sup>84</sup> ESPN will telecast additional regular season games. MLB notes that the national cablecasting of baseball originated in 1980, when the USA Network presented approximately 40 baseball telecasts during 1980, 1981, 1982 and 1983. From 1983 through 1989, there were no national cable telecasts of baseball games, and in 1989 baseball entered into an agreement with ESPN. MLB submits that ESPN has provided more than 150 games per year during 1990, 1991 and 1992, and has presented a number of updates and other baseball related features each season. MLB also asserts that ESPN has presented a daily program devoted exclusively to reporting baseball events.<sup>85</sup> In addition, regular season games are available

over regional cable sports networks, many of them home games.<sup>90</sup> MLB submits that as of September, 1992, there were nearly 37 regional cable networks available to approximately 40 million subscribers. MLB asserts that approximately 59 percent of cable systems offer such networks as part of a basic tier, 32 percent offer them on expanded basic and the remaining 9 percent offer them as premium channels.<sup>91</sup>

40. MLB contends that there has been no migration of professional baseball from broadcast television to cable. MLB asserts that as a result of declining ratings for national MLB telecasts, the broadcast networks have concluded that it has become economically less viable to maintain historic levels of national baseball telecasting.<sup>92</sup> However, MLB contends, local MLB broadcasts have increased since 1980. MLB submits that the 24 U.S. teams that operated in 1980 will present 1,584 flagship broadcasts in 1993, as compared with 1,392 in 1980. It also submits that each team will broadcast an average of 40 percent of its games in 1993, as compared with 36 percent in 1980. MLB asserts that local over-the-air telecasts lead to widespread exposure and fan support, which is a critical element in promoting attendance. Nonetheless, MLB contends that stations affiliated with a national broadcast network generally have less interest in televising baseball because of their commitments to televise network programming.<sup>93</sup>

41. INTV submits that migration of MLB games has occurred and will continue. INTV contends that in 1990, the number of nationally televised regular season games dropped from approximately 40 games to 16, and that network broadcasting of MLB games remains at this level.<sup>94</sup> Further, INTV submits, pursuant to ESPN's contract, all teams are prohibited from permitting off-air broadcast of any game on Wednesday nights, which it argues had been the most popular night for baseball broadcasts. It notes that the exclusivity provision only applies to broadcast stations, so that Wednesday night games may be shown on pay cable channels. It also expresses concern

---

<sup>90</sup> Id. at 18.

<sup>91</sup> Id. at 17-19.

<sup>92</sup> Id. at 15-16. MLB submits that ratings for Saturday afternoon games broadcast on NBC from 1983 through 1989 fell from a high of 6.1 in 1984 to 5.0 in 1989. It asserts that ABC's broadcast of prime time games achieved a

that ESPN will attempt to obtain exclusivity on other nights.<sup>95</sup> In addition, INTV submits that the development of local cable sports channels has been instrumental in reducing the broadcast schedules of particular teams, some by as many as 50 games.<sup>96</sup> INTV notes, for example, that 60 games were shown on broadcast TV in Milwaukee in 1983. Upon creation of a cable sports channel in 1984, the number of games declined to 38. Since that time, no cable channel rights have been sold and the number of broadcast games has increased to 65. INTV similarly contends that broadcast TV showings have increased in Kansas City, Seattle and St. Louis, markets with no cable sports channels.<sup>97</sup>

42. Similarly, the New York City Department of Telecommunications and Energy contends that a number of Yankees and Mets games are now shown on regional cable networks.<sup>98</sup> Indeed, the arrangement between the New York Yankees and WPIX appears to be one of the most contentious arrangements regarding local baseball telecasts. MLB notes that in 1980, the Yankees broadcast 100 games over WPIX and that in 1993, they will broadcast 50 games over WPIX. It contends that the Yankees are an exception to the general rule that baseball teams have maintained or increased their flagship telecasts during the past decade.<sup>99</sup> MSG Corporation submits that in 1988, MSG Network was given the rights for all Yankee games for 12 years and that it subsequently reached an agreement with WPIX whereby WPIX was permitted to telecast 55 games in 1991 and 50 games in 1992 and 1993.<sup>100</sup> Tribune, which owns WPIX, submits that broadcast television could not support a deal of the financial magnitude of the MSG/Yankees arrangement.<sup>101</sup>

43. On the other hand, a number of commenters agree with MLB that migration of baseball from broadcast to cable is not a concern. For example, ESPN submits that its contract with MLB has limited exclusivity provisions applicable only on Wednesday nights and does not diminish local broadcast coverage. It asserts that the number of local over-the-air telecasts reached an all-time high in 1991 (1,674 games) and will exceed that in 1993 (1,691, not accounting for the new expansion teams).<sup>102</sup> MLB concurs that ESPN's Wednesday exclusivity, which prohibits teams from authorizing over-the-air broadcasts after 4:05 pm, has not affected the number of over-the-air broadcasts of baseball games. MLB further disputes INTV's argument that

---

<sup>95</sup> Id. at 19-20; see also ESPN Reply at 28-30.

<sup>96</sup> Id. at 21-25.

<sup>97</sup> INTV Reply at 31-34.

<sup>98</sup> NYC Comments at 5.

<sup>99</sup> MLB Comments at 9-10.

<sup>100</sup> MSG Comments at 12-14.

<sup>101</sup> Tribune Reply at 2-3.

<sup>102</sup> ESPN Comments at 8-9.

Wednesday had been the most popular night for baseball broadcasts, and contends that more broadcasts were presented on Friday and Tuesday.<sup>103</sup> NCTA argues that ESPN's entry into baseball has benefitted consumers by bringing more games at more times to national TV and by offering coverage to teams and parks that might not otherwise receive wide national exposure. NCTA also contends that local broadcast coverage of baseball has increased by 11.5 percent in the past five years, and that the games shown on cable tend to be home games, which would typically be unavailable to local broadcasters.<sup>104</sup>

team against the third place team in the Division Semi-Finals, which has been a best-of-seven series since 1986-87. The two winners then play in the Division Finals, a best-of-seven series. The two winners in each conference then play in a best-of-seven Conference Final. The two conference winners then compete for the Stanley Cup.<sup>106</sup>

47. NHL submits that professional hockey is currently distributed through local broadcasts and cablecasts, superstation telecasts, national network cablecasts and pay services. The NHL has not had a national broadcast network TV contract in over a decade, although the All-Star game has been carried by NBC for the last four years. NHL submits that its lack of national network coverage is not at the league's volition, and that the networks dropped hockey in 1976 citing poor ratings. This year, a package of five NHL playoff games will appear on network television (ABC). NHL asserts that the inability to gain broadcast exposure has forced both the league and its teams to seek alternative distributors. NHL recently entered into an agreement with ESPN for five seasons (including 1992-93) whereby ESPN will telecast 25 to 27 regular season games on its primary channel, plus an agreed upon number of additional specially selected games, an undetermined number of games from playoff rounds one and two, and all Conference Championship and Stanley Cup Final games. A limited number of playoff games will also be broadcast on network TV in each of the five seasons.<sup>107</sup>

48. Individual teams license local telecasts, while the NHL licenses all national telecasts. Current NHL rules permit each team to telecast its games within a 50 mile radius of the municipality in which it plays. If there are fewer than 2,300,000 total households within that radius, the team may telecast beyond that radius as necessary to reach 2,300,000. No team may broadcast into another team's home territory when that other team is playing at home. Further, NHL rules provide that when a game is nationally cablecast, the home territories of both teams shall be blacked out on that national cablecast, although the competing teams may distribute the game in their respective markets.<sup>108</sup>

49. NHL argues that other than in New York and Hartford, where the team's flagship station went off the air, the number of regular season games broadcast in 1992-93 exceeded that of 1981-82.<sup>109</sup> With respect to the specific teams mentioned in the Notice, NHL submits that none of the pay packages of the Minnesota North Stars, the Chicago Blackhawks or the Pittsburgh Penguins constitute migration. While the Minnesota North Stars

---

<sup>106</sup> NHL Comments at 9-11.

<sup>107</sup> Id. at 5, 12, 16.

<sup>108</sup> Id. at 11-13. NHL further submits that in recent years, national and local broadcast revenues have accounted for less than six percent of NHL

made the NHL playoffs in 1989-90, 1988-89 and 1985-86, they did not advance beyond the first round until the 1990-91 season. NHL asserts that none of the North Stars' regular season home games were shown on over-the-air television in 1990-91, so home playoff games could not be said to have migrated to pay television later that year, as is argued by some commenters. Moreover, NHL notes, home games were likewise not shown over-the-air in the other years that the North Stars made the playoffs, and all away playoff games were shown locally on broadcast television in 1986, 1989, 1990 and 1991. NHL contends that the parties attempted to reach an agreement to put the home playoff games on broadcast TV in 1991 but were unable to come to terms.<sup>110</sup>

50. Further, NHL notes that in 1992, the Chicago Blackhawks telecast their home playoff games on SportsChannel Chicago. NHL submits that because home playoff games had not been cablecast in the previous seven years and had not been broadcast over the air in 12 years, their appearance on pay television in 1992 does not constitute migration.<sup>111</sup> NHL also asserts that the six regular season Penguins games shown on pay television in 1992-93 would otherwise not have been telecast because they were home games.<sup>112</sup> The charts appended to the NHL comments show that no Penguins home games had previously been telecast over-the-air or on local cable during the years in question (i.e., 1980-present).

51. INTV and the New York City Department of Telecommunications and Energy contend that there has been significant migration of hockey from broadcast to cable television. INTV asserts that according to NAB's 1990 sports survey, the number of games appearing on broadcast television declined 7.4 percent from 1986 to 1989 and the number of games appearing on local and regional cable channels increased 29.3 percent.<sup>113</sup> In addition, NYC notes that many regular season games of the New York Knicks and the New York Rangers have been shown exclusively on the Madison Square Garden Network since the network's inception in 1969.<sup>114</sup>

52. Other commenters, however, argue that broadcasters are not interested in professional hockey and that cable offers the NHL visibility that would not otherwise be provided via broadcast television. For example, ESPN submits that it has provided hockey with substantial national exposure, and notes that it has purchased time on ABC to distribute five Stanley Cup

---

<sup>110</sup> NHL Comments at 14-15; NHL Reply at 7-8.

<sup>111</sup> *Id.* at 15.

<sup>112</sup> *Id.* at 16.

<sup>113</sup> INTV Comments at 25-26.

<sup>114</sup> NYC Comments at 3-4.

playoff games this year.<sup>115</sup> NCTA similarly asserts that cable provides access to NHL games that have been long ignored by the broadcast networks.<sup>116</sup> Time Warner agrees that professional hockey is often not carried on broadcast television, and suggests that the lack of coverage is due to the proliferation of sports events during the fall and winter months.<sup>117</sup> ARC contends that viewer interest in hockey and, consequently, the interest of local broadcasters in carrying hockey, vary widely among different regions. ARC asserts, for instance, that the Tampa Lightning could not reach a rights agreement with any local broadcaster and instead made an arrangement with an ARC affiliated cable sports network.<sup>118</sup> Madison Square Garden Corp. contends that WWOR's interest in the Rangers diminished in the mid-1980s due to low ratings and that since WPIX was also not interested, Madison Square Garden Corp. picked up the additional Rangers games.<sup>119</sup> Tribune concedes that MSG offered its affiliate, WPIX, the rights to telecast Rangers and Knicks games as a package, and asserts that WPIX declined because it was only interested in Knicks games.<sup>120</sup>

53. The record shows that professional hockey has not been broadcast on national television since before 1980, the starting point of our survey, except that the All-Star Game has been broadcast on NBC since 1990 and a few playoff games were televised on ABC this year.<sup>121</sup> It therefore cannot be said that hockey has migrated from broadcast to cable on the national level. Indeed, it is questionable whether NHL games would have a national outlet absent the growth of cable television. Chart 9 of Appendix C details national cable telecasts of NHL games since 1980. With respect to local telecasts, Chart 10 shows a 14 percent decline in games broadcast between 1981-82 and 1992-93; 324 games were broadcast in 1981-82 and 279 were broadcast in 1992-93. It is unclear from the record whether this decline of 45 games is due to the expansion of national and local NHL cablecasts or is

---

<sup>115</sup> ESPN Comments at 9. Those five games were broadcast live on Sunday afternoons, beginning April 18, 1993, and ending May 16, 1993. The first three weeks consisted of regional coverage of various games and the fourth and fifth weeks each consisted of a single national game. See NHL May 24, 1993, Supplemental Comments at 3-4.

<sup>116</sup> NCTA Comments at 5.

<sup>117</sup> Time Warner Comments at 14-20.

<sup>118</sup> ARC Comments at 7. ARC notes that the Lightning required that the cable sports network arrange to have at least 10 Lightning away games aired on broadcast television. *Id.* at 8.

<sup>119</sup> MSG Comments at 5-10.

<sup>120</sup> Tribune Comments at 4-5.

<sup>121</sup> NHL indicates that data regarding national broadcasts are not available for the 1980-81, 1981-82 and 1982-83 seasons. It is therefore possible that additional games were broadcast nationally during those years.



entirely attributable to low ratings; local ratings data would be helpful. In any event, we do not consider this slight decline a cause for concern. Another factor that may contribute to the lack of national NHL exposure and the decline in the number of local NHL broadcasts is the fact that hockey is played at the same time as far more popular sports. As such, NHL games appear to have difficulty competing for audience with professional football, professional basketball, college football, college basketball and other events occurring during the fall and winter months.

#### F. College Sports

##### 1. In general

54. The Notice requested data regarding the video distribution of college football and basketball since 1980. Specifically, the Notice sought information regarding scheduling, live versus tape-delayed telecasts, ratings, contract terms, conference objectives, television revenues and gate receipts.<sup>122</sup> In general, most collegiate commenters assert that cable television coverage of collegiate athletics has not led to a decrease in broadcast coverage. Rather, they argue, cable has expanded the number and variety of collegiate events available to the public and in many cases events have been cablecast that would not otherwise have been shown on broadcast television.<sup>123</sup> For example, the University of Pittsburgh submits that since ESPN has begun televising college football, its team has made 22 national appearances that would probably have not otherwise been telecast nationally. The University of Pittsburgh further notes that its basketball team has averaged four to five live appearances per year on ESPN since 1982, and that its contract with a regional cable sports channel calls for the live telecasting of 18 to 20 men's basketball games per year and four other varsity sports events of the University's choosing.<sup>124</sup> ECU similarly argues that the popularity of college basketball has increased due to ESPN exposure.<sup>125</sup>

55. With respect to revenues, NCAA submits that 1989 ticket sales for Division I institutions with football programs represented approximately 35 percent of athletic department revenues, and that revenues from bowls, tournaments and television represented 14 percent of athletic department revenues. NCAA asserts that television revenues represented a smaller proportion of revenues for Division I institutions without football and for institutions in other Divisions. NCAA believes that there is some

---

<sup>122</sup> Notice at 1495-96.

<sup>123</sup> See, e.g., ACC Comments at 1; BYU Reply at 1; CAA Comments at 1-3; CAC Comments at 1-3; Colorado State Comments at 1-3; Southland Conference Comments at 1-3; Southwest Conference Comments at 2; University of Denver Comments at 2-3; UIL Comments at 2; University of Pittsburgh Comments at 1-2.

<sup>124</sup> University of Pittsburgh Comments at 1-2.

<sup>125</sup> ECU Reply at 1.